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REPORTING & VIDEO, INC.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

AUTOMATED BUSINESS COMPANIES,)
)
Plaintiff,)
)
vs.) Civil Action
) No. H-06-1032
)
ENC TECHNOLOGY CORP., NET TRANSMIT)
& RECEIVE, SL, NTR NORTH AMERICA,)
LLC, PRO SOFTNET CORPORATION,)
ACCESSANYWHERE SYSTEMS, ALERIC)
INTERNATIONAL, INC., BEINSYNC,)
LTD., WEBEX COMMUNICATIONS, INC.,)
3AM LABS, INC., 01 COMMUNIQUE)
LABORATORY, INC., and XFORMX, INC.,)
)
Defendants.)

VIDEOTAPE DEPOSITION OF MARC BROCKHAUS

TAKEN ON BEHALF OF THE DEFENDANTS

IN OKLAHOMA CITY, OKLAHOMA

ON JUNE 17, 2009

REPORTED BY: KAREN B. JOHNSON, CSR

1 A I believe there are.

2 Q Is Dunlap Codding a shareholder of ABC?

3 A No.

4 Q Are you personally a shareholder of ABC?

5 A No.

6 Q Do you know who any of the shareholders
7 are?

8 A I believe that Bryan, Chuck, and Jim are
9 the shareholders of ABC.

10 Q With respect to Bryan, and by Chuck, you
11 mean Charles Freeny, III?

12 A Yes.

13 Q With respect to Bryan and Chuck Freeny,
14 other than them being shareholders of ABC, is there
15 any other connection that you know of to ABC?

16 A I don't know.

17 Q Do you know whether James, Bryan, or Chuck
18 Freeny have employment agreements with ABC?

19 A I don't know.

20 Q Do you know whether James, Bryan, or Chuck
21 Freeny have any obligation to assign inventions to
22 ABC?

23 A I don't know.

24 Q Have you ever investigated that, whether
25 those folks have obligations to assign to ABC?

1 A Don't know if I ever have.

2 Q Can you think of any reason why you would
3 have?

4 MR. KAPLAN: Objection; form.

5 THE WITNESS: Not that I can think of
6 right now.

7 Q (By Mr. Kubehl) When you filed the three
8 patent applications for Mr. Freeny on the patents
9 that are in suit, Mr. Freeny was listed as the sole
10 inventor on those applications; correct?

11 A Correct.

12 Q And at one point Mr. Freeny asked you to
13 file a certificate of correction that would correct
14 what he viewed as an inadvertent failure to add his
15 sons as inventors on some of those patents; right?

16 A I'm not sure that your question's
17 accurate.

18 Q At one point did Mr. Freeny ask you to
19 correct an omission on his part because he had
20 inadvertently failed to include Bryan, James, and
21 Chuck Freeny on some of his Split PC and Rent-A-PC
22 patent applications?

23 A Yes.

24 Q And do you recall that he wanted to add
25 Bryan Freeny to the 743 patent, the 253 patent, and

1 the 945 patent?

2 A I'm not sure to --

3 (Defendant's Exhibit No. 10 marked for
4 identification and made part of the
5 record)

6 Q (By Mr. Kubehl) Okay. I don't want to
7 make this a memory test. Let me hand you what's
8 been marked as Exhibit 10. Have you seen Exhibit 10
9 before?

10 A Yes.

11 Q Is Exhibit 10 an e-mail from Charles
12 Freeny to Charles Coddling? The first page.

13 A Yes.

14 Q And that e-mail is dated August 22, 2002?

15 A Yes.

16 Q The from line on the e-mail says ClC2,
17 that's the letter C, ClC2C3C4@aol.com, do you see
18 that?

19 A Yes.

20 Q Is that the e-mail address of Charles
21 Freeny, the named inventor?

22 A Yes.

23 Q And the e-mail says, "Attached are the
24 information we discussed regarding correcting the
25 inventors contributing to some of the inventions

1 submitted by myself. Please call if you need any
2 more information." Do you see that?

3 A Yes.

4 Q And then the next page is a page on ABC
5 letterhead, do you see that?

6 A Yes.

7 Q And that document is dated August 22,
8 2002?

9 A Yes.

10 Q And in that document, Mr. Freeny
11 identifies inventors that were mistakenly omitted
12 from several of his inventions; right?

13 A Yes.

14 Q And for Bryan Freeny, Bryan Freeny, among
15 other cases, was mistakenly omitted from the 013
16 case, which is the 743 patent; right?

17 A That's what Chuck indicated.

18 Q Chuck indicated that Bryan was also
19 mistakenly omitted from the 253 case, that's your
20 Docket No. 032; is that right?

21 A That's correct.

22 Q Chuck indicated that Bryan was mistakenly
23 omitted from the 945 patent application; is that
24 right?

25 A Yes.

1 Q And did Chuck indicate that -- I say
2 Chuck, did Mr. Freeny, the inventor, indicate that
3 his son, Chuck Freeny, III, was mistakenly omitted
4 from the 743, the 253, and the 945 applications,
5 among others?

6 A Yes.

7 Q You were involved in preparing some
8 paperwork to add these folks as inventors on those
9 cases; correct?

10 A Correct.

11 Q That turned out to be a fairly large job;
12 correct?

13 A Correct.

14 Q Did you -- did you bill your time for the
15 work that you spent on that job?

16 A I don't recall. I would assume so, it
17 would have been my practice to, but I don't recall.

18 Q Do you recall whether Mr. Freeny paid for
19 the work that you did on that project?

20 A I don't know.

21 Q Do you have any recollection of him not
22 paying for that work?

23 A There was a long time period which he
24 didn't pay for any work.

25 Q And why wasn't he paying for any work?

1 A I don't know.

2 Q Was it a dispute over whether or not he
3 owed it?

4 A No.

5 Q Do you know when you started your work in
6 preparing the paperwork to change the omitted
7 inventors issue?

8 A I'm sorry, I missed the first part of your
9 question.

10 Q Do you recall when you started your work
11 to correct the inventorship on the three patents in
12 suit?

13 A Shortly after receiving this letter.

14 Q Do you recall how much time you spent?

15 A No, I don't.

16 Q Would your billing records show that?

17 A They may.

18 MR. KUBEHL: He needs to switch tapes
19 again, so we can go ahead and do that.

20 MR. KAPLAN: Why don't we take a short
21 break?

22 MR. KUBEHL: Sure.

23 (Break taken from 9:57 to 10:05)

24 (Defendant's Exhibit No. 11 marked for
25 identification and made part of the

1 record)

2 Q (By Mr. Kubehl) Mr. Brockhaus, I'm going
3 to hand you a copy of what's been marked Defendant's
4 Exhibit 11. Do you recognize Exhibit 11 as a series
5 of materials that you prepared in connection with
6 Mr. Freeny's request to correct the inventorship on
7 the patents in suit?

8 A Yes.

9 Q The first page is a letter dated October
10 4th, 2002; right?

11 A Yes.

12 Q That's a letter from you to Mr. Freeny?

13 A Yes.

14 Q And it tells him that you've enclosed some
15 documents for him and his sons to sign to correct
16 the error of inadvertently omitting inventors from
17 his filings for the patents in suit; right?

18 A Yes. Says, "Please find enclosed the
19 necessary paperwork to add the inventors which were
20 inadvertently omitted from various inventions."

21 Q Among those various inventions were the
22 three patents in suit; right?

23 A Yes.

24 Q Among the paperwork that you prepared and
25 sent him was on the second page of Exhibit 11 a

1 statement agreeing to change of inventorship; right?

2 A Yes, second page, a statement agreeing to
3 change of inventorship in a patent.

4 Q Right. That was something that Mr. Freeny
5 was supposed to sign saying that he agreed that the
6 inventorship should be changed; right?

7 A Yes.

8 Q The next page -- and that page has a
9 document number on the bottom, DC 39466, do you see
10 that?

11 A Yes.

12 Q That page is a statement of non-deceptive
13 intent by person being added by petition to change
14 inventorship; right?

15 A Yes.

16 Q That's a document that Bryan Freeny,
17 Mr. Freeny's son, would have signed to confirm that
18 he did not -- there was no deceptive intent involved
19 in leaving him off the patents in suit in the first
20 place; right?

21 MR. KAPLAN: Objection; form.

22 THE WITNESS: I'm sorry, that was a long
23 question.

24 Q (By Mr. Kuehl) Sure. This document that
25 we're looking at, DC 39466, this is a document that

1 Bryan Freeny would have signed to confirm that there
2 was no deceptive intent in leaving him off of the
3 list -- list of inventors on the patents in suit;
4 right?

5 MR. KAPLAN: Objection; form.

6 THE WITNESS: It's a document, it's a
7 statement of non-deceptive intent by a person being
8 added by a petition.

9 Q (By Mr. Kubehl) That person is Bryan
10 Freeny; right?

11 A Yes.

12 Q This is for the 253 patent, one of the
13 patents in suit; right?

14 A Yes.

15 Q He would have been signing this to say
16 that there was no deceptive intent in leaving him
17 off of the 253 application; right?

18 MR. KAPLAN: Objection; form.

19 THE WITNESS: Yes, in -- in the document,
20 he's hereby declaring that the inventorship error,
21 in failing to include his name as an inventor on
22 this patent, occurred without any deceptive
23 intention on his part.

24 Q (By Mr. Kubehl) Right. That's what he
25 would have had to sign to be added as an inventor on

1 the 253 patent; right?

2 A Yes.

3 Q And the next page, document 39467, that's
4 a similar document for Charles Freeny, III, to sign;
5 right?

6 A Yes.

7 Q Charles Freeny, III, to be added as an
8 inventor on the 253 patent, would have had to sign
9 this statement declaring that the inventorship error
10 in the 253 patent of failing to include him was
11 without any deceptive intent on his part?

12 MR. KAPLAN: Objection; form.

13 Q (By Mr. Kuehl) Is that right?

14 A That's right.

15 Q The document DC 39470, I've turned a
16 couple of pages into the collection of documents
17 that we're looking at. Do you see that one? It's
18 39470, and the top of it says assignment, I've
19 turned a couple pages into the document from where
20 we were.

21 A Yes.

22 Q The document starting at 39470 and
23 continuing to 39472, is that an assignment that you
24 prepared that would have had Bryan Freeny and
25 Charles Freeny, III, assign their rights in the

1 patents listed on this assignment to the company
2 ABC?

3 A Yes.

4 Q And among the patents or applications
5 listed on this assignment are the three patents in
6 suit; right?

7 MR. KAPLAN: Objection; form.

8 Q (By Mr. Kuehl) Is No. 5 the 253 patent
9 that's in suit?

10 A Yes.

11 Q Is No. 9 the serial number for the 945
12 patent that's in suit?

13 A Yes.

14 Q And is No. 17, Docket No. 072, is that
15 your docket number for the 943 case that's in
16 suit -- I'm sorry, the 943 patent that's in suit?

17 A Yes.

18 Q This document would have assigned rights
19 from Bryan Freeny and Charles Freeny, III, among
20 other things, the three patents in suit to the
21 company ABC; is that right?

22 A Correct.

23 Q Was this document ever signed, to your
24 knowledge?

25 A Yes.

1 Q Do you have a signed copy of this in your
2 files?

3 A I have not been able to locate a signed
4 copy of this, at least I don't recall locating it,
5 but I remember receiving these documents and they
6 were signed.

7 Q And when you -- when you say "these
8 documents," is it all the documents that we've been
9 talking about here today?

10 A Yes.

11 Q With respect to Exhibit 11?

12 A Yes.

13 Q Did you receive similar documents for the
14 945 patent?

15 A Yes.

16 Q Signed documents?

17 A Yes.

18 Q Did you receive similar signed documents
19 for what became the 943 patent?

20 A Yes.

21 Q Have you looked for signed copies of those
22 documents?

23 A Yes.

24 Q Have you located any?

25 A Not that I recall.

1 (Defendant's Exhibit No. 12 marked for
2 identification and made part of the
3 record)

4 Q (By Mr. Kubehl) Hand you a copy of
5 Exhibit 12. Do you see that Exhibit 12 is a
6 petition for correction of inventorship of patent?

7 A Yes.

8 Q And this petition for correction of
9 inventorship, this particular one is for the 253
10 patent; correct?

11 A Correct.

12 Q At the top left-hand corner it says,
13 express mail number, EV106032239 U.S., do you see
14 that?

15 A Yes.

16 Q What is that referring to?

17 A That's the express mail, express mail
18 number from a -- a -- it's the express mail number
19 that would have -- would have been provided on the
20 envelope for transmission of the document to the
21 patent and trademark office.

22 Q So when you're -- when you're getting
23 documents ready to file with the patent and
24 trademark office, do you give them one of these
25 express mail numbers to put on the document?

1 A Yes.

2 Q And is the purpose of the express mail
3 number so that you have confirmation that it was
4 sent on a particular day?

5 A It's -- it's part of the requirements, at
6 least it was at that time.

7 Q Did you prepare this petition that we're
8 looking at in Exhibit 12?

9 A Yes.

10 Q And were there similar petitions prepared
11 for the 945 patent and the 943 patent?

12 A Yes, those would have been, I believe,
13 those would have been petitioned for corrections of
14 inventorship of patent applications or they would
15 have been amendments of the inventorship for a
16 patent application, but they would have been -- had
17 similar effect.

18 Q So in each of the patents in suit, in the
19 253, the 945 and the 943 patents, either when they
20 were patents or applications, you did prepare
21 petitions for correction of inventorship of those
22 patents?

23 A Yes.

24 Q And those petitions would have added Bryan
25 Freeny and Charles Freeny, III, as inventors?

1 A Yes.

2 Q If you look at the second to the last page
3 that's labeled DC 39387, do you see that? Are you
4 with me, sir?

5 A Yes.

6 Q Now, the page before that is the last page
7 of the petition that we've been looking at, this one
8 is called transmittal form; is that right?

9 A Yes.

10 Q And it says at the top, under that same
11 express mail number that we've been talking about
12 with respect to the petition, deposited on January
13 28th, 2003, do you see that?

14 A Yes.

15 Q What is that supposed to indicate?

16 A That it was deposited on January 28, 2003,
17 or at least that I intended to deposit it on January
18 28, 2003.

19 Q Okay. Did you deposit this or a similar
20 petition for correction of inventorship for the 253
21 patent?

22 A I don't believe so.

23 Q What about for the 945 patent?

24 A I don't think so.

25 Q What about the 943 patent?

1 A I don't believe I did.

2 Q And why was that?

3 A Because conversations with Jim Freeny,
4 after the paperwork was signed and transmitted back
5 to our office, raised a question in my mind of
6 whether Jim, Bryan, and Chuck had been informed of
7 the requirements of inventorship, and so before
8 submitting these -- those forms, I conducted a
9 further investigation to determine whether they
10 really were inventors on these patent applications.
11 And through that investigation, I determined that
12 they were not inventors and so that's why I didn't
13 submit the paperwork.

14 Q Are there any documents that memorialize
15 your findings as to what each person contributed to
16 the patents?

17 A I'm not aware of any documents.

18 Q What do you understand Bryan Freeny to
19 have contributed to the 253 patent?

20 A My understanding is he didn't contribute
21 anything to the 253 patent.

22 Q Okay. Did he contribute anything to the
23 945 patent?

24 A Not to my knowledge.

25 Q Did he contribute anything to the 943

1 patent?

2 A Again, not to my knowledge.

3 Q Was Charles Freeny, the inventor, just
4 factually wrong in saying that they had contributed
5 something?

6 A I believe so.

7 Q What did -- what did Mr. --

8 A He was either factually wrong or he -- he
9 didn't understand the requirements, one or the
10 other.

11 Q What did Mr. Freeny believe Bryan had
12 contributed to the inventions?

13 A I don't know.

14 Q What did Mr. Freeny believe that Charles,
15 III, had contributed to the inventions?

16 A I don't know.

17 Q What did Mr. Freeny believe that James had
18 contributed to any of his inventions that are listed
19 on the assignments?

20 A Again, I don't know.

21 Q You never talked to Mr. Freeny about it?

22 A I did not.

23 Q Never asked him whether he had worked in
24 collaboration with any of his sons on any of these
25 inventions?

1 A I did not.

2 Q Did someone else at Dunlap & Coddington?

3 A Skip Coddington discussed this with -- with
4 Mr. Freeny.

5 Q When did he discuss it with Mr. Freeny?

6 A I think he discussed it with Mr. Freeny
7 several -- during several different times, but --

8 Q Did he discuss it with Mr. Freeny when
9 Mr. Freeny first indicated that these -- that his
10 sons should be added as inventors?

11 A I believe so, yes.

12 Q And as a result of that discussion, you
13 were instructed to put together paperwork to make --
14 to make that happen to add those folks as inventors;
15 right?

16 A Right.

17 Q And over a course -- over a course of time
18 between August 2002 and January 2003, you spent a
19 significant amount of time putting together all the
20 paperwork to do that; right?

21 A Yes.

22 Q And during that time, Skip was having
23 conversations with Charles Freeny, the inventor, as
24 to what the contributions of his sons were; right?

25 A I don't know exactly what they talked

1 about. And I don't know the timing of that, either.

2 Q Well, Skip did have conversations about
3 what their inventorship contributions were; right?

4 A Yes.

5 Q And we know that at least some of those
6 conversations happened when Charles, the inventor,
7 asked them to be added; right?

8 A Yes.

9 Q And you don't know whether additional
10 conversations were ever had by Skip; right?

11 A I believe there were additional
12 conversations with Skip.

13 Q Okay. And do you know when those were?

14 A No, I don't.

15 Q So Skip's the only one that talked to
16 Charles about what Charles thought they contributed;
17 right?

18 MR. KAPLAN: Objection; form.

19 Q (By Mr. Kuehl) By "they" I mean his sons.

20 A To my knowledge, yes.

21 Q Is -- is Skip what you'd consider
22 inexperienced in determining inventorship?

23 A No, I would say he's experienced.

24 Q Do you think he's more experienced than
25 you are?

1 A Yes.

2 Q Did you have conversations with Bryan and
3 Charles, III, as to what they contributed?

4 A Yes.

5 Q And what did Bryan tell you he
6 contributed?

7 A He didn't believe he had contributed
8 anything to the invention. He does remember
9 discussing the invention with his -- with his
10 father, but from -- his belief was that he didn't
11 contribute anything to the invention, the invention
12 was already formed in his father's mind and his
13 father was discussing with him the -- whether it was
14 marketable or things of that nature.

15 Q Whether you could bill for it, for
16 example?

17 A I don't know the details.

18 Q When you say whether it was marketed --
19 marketable, whether -- whether people would pay for
20 a service like what's described in the patent?

21 A Well, whether his -- Bryan has a
22 background in the telecommunications industry, and
23 my understanding is, his father had already formed
24 the conception and that he had discussed that with
25 Bryan, so as to just discuss it with him about its

1 applicability, you know, there may be various
2 things, and again, I wasn't involved in those
3 conversations.

4 Q What specifically did Bryan say that his
5 father had already conceived by the time he talked
6 to Bryan?

7 A The entire -- everything.

8 Q What exactly?

9 A As far as I know, the entire invention
10 described in the patent application.

11 Q Did you go through the -- the patent
12 applications, each one of the three patent
13 applications line by line with them and determine
14 that all of that subject matter was already known by
15 the time Bryan talked to his dad about it?

16 A No, I didn't go through the application
17 line by line, no.

18 Q Did you go through all the concepts on the
19 application with him one by one?

20 A We discussed the concepts and the -- and
21 the applications.

22 Q Did you go through all the concepts in the
23 application?

24 A I don't recall.

25 Q Did you go through all the concepts in the

1 application with Charles, III?

2 A It was on a same telephone conversation,
3 so I went through it with both of them.

4 Q How long was the telephone conversation?

5 A I don't recall.

6 Q When did it happen?

7 A I really don't recall the timing of it.

8 Q Did you -- did you talk to Skip about
9 whether or not they should be named as inventors?

10 A I believe I did.

11 Q When did that conversation happen?

12 A I think, in fact, I think we've discussed
13 that several times.

14 Q When would -- when would have been the
15 earliest time that conversation happened?

16 A Shortly after our meeting with Bryan,
17 Chuck, and Jim.

18 Q And I apologize if you've answered this,
19 was -- was your answer that you didn't know when
20 that meeting was?

21 A That's correct, I don't -- I don't recall
22 the timing of that -- that meeting.

23 Q As between on one side of the spectrum
24 August 2002 when Mr. Freeny asked that they be added
25 and January 2003 when you prepared the petitions, do

1 you know where -- where relative to that spectrum
2 this meeting might have happened with Charles and
3 Bryan?

4 A I really don't recall when that meeting
5 was, it was -- it was after we had already received
6 the signed paperwork.

7 Q Why did -- why did you have Charles and
8 Bryan sign the assignment?

9 MR. KAPLAN: Objection; form.

10 Q (By Mr. Kubehl) And by the assignment, I
11 mean the one that we've been talking about that's
12 Exhibit 11.

13 MR. KAPLAN: Objection; form.

14 THE WITNESS: Why? I was following -- I
15 was following instructions that I had been provided
16 with at that time.

17 Q (By Mr. Kubehl) And you say at that time,
18 at what time?

19 A I think it was October 4th, 2002.

20 Q What became of that signed assignment?

21 A I really don't know what became of that
22 signed assignment, I know that we received all of
23 the signed paperwork back, but I don't recall what
24 happened to that signed assignment.

25 Q What do you generally do with assignments

1 from inventors?

2 A Generally -- generally would record it in
3 the patent office and -- and file it. And generally
4 I would have filed this paperwork and I would have
5 recorded that assignment, but, again, in this case,
6 there is something in a conversation with Jim that
7 led me to believe that he did not know the legal
8 requirements of what it was to be an inventor, and
9 so that told me that I needed to investigate further
10 before I filed that paperwork.

11 Q That was in a conversation with Jim
12 Freeny, the son?

13 A Yes.

14 Q You have no reason to believe that Charles
15 Freeny didn't understand what it meant to be an
16 inventor, though; right?

17 A I had reason to believe that at that time,
18 Charles Freeny was not thinking as clearly as he
19 normally would.

20 Q Why is that?

21 A Because he had recently been diagnosed
22 with liver cancer.

23 Q And when you say he wasn't thinking as
24 clearly as he normally would, do you -- do you
25 believe that his -- his illness was affecting his --

1 his ability to reason or was he taking on a
2 different outlook in life?

3 A I'm -- I'm not a doctor, so I really
4 can't -- can't infer what -- what was going on with
5 him, but I had -- I -- I believe that -- that he
6 wasn't -- I believe that he wasn't thinking as
7 clearly at that time as he -- as he ordinarily
8 would.

9 Q When --

10 A Or --

11 Q Sorry.

12 A I'm sorry. Go ahead.

13 Q When did this time period start when you
14 thought he wasn't thinking as clearly as he normally
15 would?

16 A It was right around -- I don't -- I don't
17 recall the exact timing, it was -- it was in the --
18 it would have been in the late 2002, early 2003 time
19 period, I believe.

20 Q If -- if Bryan and Charles had been --
21 had, in fact, been inventors on the first patent
22 filing, the 743 case, is it true that that 743 case
23 could be used as prior art against later filings in
24 the same family where -- where Bryan wasn't an
25 inventor, where only his dad was an inventor?

1 MR. KAPLAN: Objection; form.

2 THE WITNESS: I don't know.

3 Q (By Mr. Kubehl) You understand the
4 concept of prior art and different inventive
5 entities?

6 A Uh-huh.

7 Q And do you understand that if Charles
8 Freeny, Sr., and his son, Bryan, were inventors on
9 the first patent, the 743 patent, and only Charles
10 was an inventor of what was claimed in say the 943
11 patent, that that original filing could be prior art
12 because it's from a different inventive entity?

13 MR. KAPLAN: Objection; form.

14 THE WITNESS: I'm sorry, could you repeat
15 the question?

16 Q (By Mr. Kubehl) Sure.

17 A Or read it -- read it back, please.

18 (Record read back as requested)

19 MR. KAPLAN: If you want to ask him what
20 he knew or believed at the time, that's one thing.
21 If you're asking him to give current opinions that
22 relate to validity or obviousness or anything else,
23 then those are questions he's not going to answer.

24 Q (By Mr. Kubehl) Let me -- let me limit
25 that question to at the time that you were preparing

1 these, did you understand that?

2 A I don't recall, I don't know if I did or
3 not.

4 Q Do you understand the concept in patent
5 law that a patent filing by two different
6 inventive -- I'm sorry, a patent filing by one
7 inventive entity, and by that I mean two
8 inventors --

9 A Uh-huh.

10 Q -- can be prior art against a subsequent
11 filing by just one of those inventors?

12 MR. KAPLAN: Same objection.

13 Q (By Mr. Kuehl) Did you understand that
14 at the time as a general concept?

15 A In certain circumstances, yes.

16 Q Did you understand at the time, as a
17 general concept, that Mr. Freeny, the inventor, that
18 his own work could be used as prior art against him
19 if it was true that the early work involved him and
20 his sons and some of his later work involved only
21 him?

22 A I'm not sure that I did.

23 Q Is that a new concept that you've come to
24 realize in the last couple years?

25 MR. KAPLAN: Objection; form.

1 THE WITNESS: I'm not -- just -- I'm --

2 Q (By Mr. Kubehl) Generally, as a patent
3 lawyer, in your work as a patent lawyer, have you
4 understood since say the year 2000 that an
5 inventor's own work can be prior art against him if
6 later he collaborates with another person to do an
7 improvement on that original work?

8 A Yes.

9 Q And so -- so did you understand generally
10 then at the time you did these petitions to correct
11 inventorship that if Mr. Freeny had -- had
12 collaborated with his sons on the original patent
13 filing and then later came up with an improvement by
14 himself, that the original work could be prior art
15 against him?

16 A I don't recall if I considered that or
17 not.

18 Q As a general legal concept, you understood
19 that concept, didn't you?

20 A Yes.

21 Q The -- the 945 patent, if we can turn to
22 Exhibit 3, switch gears here and -- and look at the
23 945 patent, so can we get Exhibit 3 in front of us.
24 Do you have that, sir?

25 A Yes.